Supreme Court of the United States

OCTOBER TERM, 1931

No. 265

L. A. NIXON,

Petitioner,

against

JAMES CONDON and C. H. KOLLE

Respondents.

MOTION FOR LEAVE TO PARTICIPATE IN THE REARGUMENT

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

C. N. Love, Julius White, The Houston Informer and Texas Freeman, and their attorneys herein, individually and on behalf of all other Negroes in the City of Houston, Harris County, and State of Texas, who are not otherwise represented, hereby respectfully move this Honorable Court for leave to participate, as amici curiae or otherwise as the Court may direct, in the reargument of the above styled and numbered cause, which reargument was by this Court, on Monday, January 18, 1932, ordered.

In support of this motion, movants respectfully show to the Court as follows:

1. That, on October 5, 1931, this Court granted the movants leave to file a brief in support of the petition for writ of certiorari, and that said brief, in the opinion of movants, submits a different point of view, a different analysis of the issues involved, and important arguments which are

different from those submitted in the brief of petitioner in support of his application for the writ.

2. That, on December 8, 1931, the writ of certiorari having been theretofore granted, this Court granted to movants leave to file a brief upon the merits, and that said brief, in the opinion of movants, submits a different point of view, a different analysis of the issues involved, and important arguments which are different from those submitted in the brief of petitioner upon the merits.

3. That, on January 7, 1932, the case was submitted upon oral argument by counsel for petitioner. These movants are advised and believe that the case was argued upon the theory of counsel for petitioner that there was properly involved in the case a question of party membership, and that the universal rule that in party matters the party is supreme was inapplicable in this case because the State of Texas had so far acted in the matter as to deprive the party of the power, which it otherwise possesses. As evidence the following quotations are cited:

> "The only issue in this case is, then, the question of whether the acts of the respondents was state action." Page 12 of Petitioner's Brief on the Merits.
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> "The State being the supreme sovereignty, it must be deemed to have superseded whatever sovereign powers political parties may previously have had with respect to the control of primaries and party membership." Page 21 of Petitioner's Brief on the Merits.

4. That, under the point of view of movants and their analysis of the issues involved, there is properly no question

of party membership involved in the case; the fundamental issue, movants think, being the power of any State, whether Michigan or Texas, to provide for a statutory election in which the State guarantees to certain of its citizens the right to participate, while declining to guarantee such right to others of its citizens, when they are sought to be deprived of that right on the ground of race and color alone.

Under this point of view and analysis, movants believe that, in view of the following language of the Circuit Court of Appeals in this case, to wit:

> "It is of course to be conceded, since the decision in Nixon v. Herndon, supra, that the right of a qualified citizen to vote extends to primary elections as well as to general elections." Nixon v. Condon, et al. 49 Fed. (2nd) 1012, 1013,

and, in view of the fact that this Court has jurisdiction by reason of the substantial contentions that the Texas statute involved is unconstitutional, it is wholly immaterial whether the defendants' action is state action or not, this court's jurisdictional power extending to the relief against any legal wrong disclosed by the record.

5. That, should this Court decide the questions involved in this case adversely to the petitioner, not only he, but the 854,964 Negroes in Texas (according to the 1930 census), as well as millions of other Negroes all over the South, where, as a matter of common knowledge, the same system of disfranchising Negroes is in operation, will be perpetually denied the right to vote; which, as a matter of common

knowledge in Texas, means a denial of good streets, drainage, lights, and adequate police and fire protection in Negro neighborhoods; a denial of a fair proportion of parks and playgrounds; a denial of adequate library facilities; a denial of adequate educational opportunities; a denial of adequate hospitals and other health rehabilitating institutions; denial of adequate care to Negro delinquents and unfortunates; and a denial of anything like a semblance of justice in the distribution of all of the other civic benefits which flow from the State to its citizens, the burdens of citizenship in Texas being distributed, as a matter of common knowledge, without regard to race or color. Movants respectfully ask the court to judicially notice these matters of common knowledge.

6. That, under the circumstances set out in this motion, movants believe that the matters involved are so grave, and the millions of lives to be affected so numerous, that the point of view and analysis contained in the briefs which this Court has permitted movants to file in this case, should have opportunity to be submitted to this Honorable Court upon oral argument before this case is decided upon its merits.

Movants and their attorneys feel it not improper also to suggest to this Court, that because they have to live in Texas under the system being considered in this case, they are justified in urging the peculiar pertinence here of the following words of Mr. Justice Holmes in the case of Diaz v.

Gonzalez y Lugo, 67 L. ed. 550, 552:

> "When we contemplate such a system from the outside it seems like a wall of stone, every part even with all the others, except so far as our own local education may lead us to see subordinations to which we are accustomed. But to one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have got from the books."

WHEREFORE, premises considered, movants and their attorneys pray that this Honorable Court may grant them leave to participate in the reargument of this case.

Dated February 3, 1932.

C. N. LOVE
JULIUS WHITE
THE HOUSTON INFORMER AND TEXAS FREEMAN
By G. H. WEBSTER, President
J. ALSTON ATKINS,
One of Attorneys for Movants
Office and Post Office Address
409 Smith Street, Houston, Texas.

THE STATE OF TEXAS
COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared C. N. Love, Julius White, G. H. Webster, and J. Alston Atkins, who, having been by me first duly sworn, on their oaths depose and say:

That they are the identical parties who executed the

within and foregoing motion, and that the allegations set forth therein are true, according to their best knowledge and belief.

Subscribed and sworn to before me this 3rd day of February, A. D. 1932.

LELAND D. EWING
Notary Public in and for Harris County, Texas.

My commission expires June 1, 1933.
(SEAL)

Certificate of Counsel

I hereby certify that in my opinion the foregoing Motion for Leave to Participate in the Reargument is well founded in law and is filed in good faith and not for delay.

J. ALSTON ATKINS,
One of Attorneys for Movants.